IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2888 OF 2004

Hanmant Appa Gharge & Ors. : Petitioners

(Orig.Opponent No.2 to 5)

V/s.

Subhedar Shidoji Gharge & Ors. : Respondents

(No.2 & 3 Orig. Applicants

No.4 & 5 - Opponent No.1&6)

...

Mr.R.G.Ketkar for the petitioners.

Mr.S.A. Masal for respondent Nos.1 to 3.

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CORAM : S.A. BOBDE, J.

June 28, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Masal, learned counsel, appears and waives service of rule on behalf of the respondent nos.1 to 3.

Heard by consent.

2. This petition is directed against the order of the Sub-Divisional officer, Khanapur Sub-Division, Vita, dated 15.3.2004 by which the Sub-Divisional Officer has, in the course of hearing the petitioners' appeal, directed vacation of stay granted on 13.2.2004 in Tenancy Appeal

No.2/2004. The appeal was filed by the petitioners against the respondents challenging the order dated 6.2.2004 passed by the Tahsildar, Kadegaon, by which the Tahsildar directed the petitioners to hand over possession.

3. Mr.Ketkar, the learned counsel for the petitioners, submitted that the impugned order and notice to possession are liable to be interfered with.

4. The relationship between the parties is as follows:-

The petitioners are legatees of the original tenant one Bala Tukaram Palkar. The respondents claim to be the lessees of Bala Tukaram Palkar. The dispute between the parties at an earlier stage reached the Supreme Court. The Supreme Court by its decision in Civil Appeal No.2948 of 1980 observed as follows:-

> "2. No doubt, Bhaskar Pandurang was the original owner of the land. But it was leased to Bala Tukaram, who was the permanent tenant. He became a statutory purchaser in the proceedings under Section 32-G of the Act. Bala Tukaram had

> sub-leased the land to Daji Murari and Datu Mali from 1950 to 1957. Hence Bala Tukaram was the land-owner vis-a-vis Daji Murari and Datu Mali for the purposes of Section 32(1)(B) of the Act. The finding of fact is that the protected tenants were dispossessed before 1.4.1957 by Bala Tukaram. Consequently, they are entitled to restoration of possession."

Having regard to the observations of the Supreme Court, the Tahsildar ordered restoration of possession to the respondents.

5. After the order of the Supreme Court, the petitioners have filed a suit, being Regular Civil Suit no.179 of 1999, in which the learned Civil Judge, Junior Division, Vita, has observed that then Member of the Maharashtra Revenue Tribunal was related to the respondent no.2 i.e. Dnyanoji Shidoji Gharge. Dnyanu’s niece is said to have been given in marriage to one Subrao, who is the nephew of Mr.S.T.Mane, who was a member of the Maharashtra Revenue Tribunal, whose order was eventually confirmed by the Supreme Court by the order reproduced above. Much was made of this relationship to cast aspersion on the revenue

authorities, including the Tribunal. I find no substance in the submission.

6. There is no dispute that the respondents herein have filed an appeal against the aforesaid order of the Civil Judge, Junior Division, Vita, and that stay has been granted to the order of the Civil Judge, Junior Division.

7. Having regard to these circumstances, I find absolutely no merit in the petitioners' prayer that there is anything illegal in the order of the Tahsildar or the Sub-Divisional Officer calling upon the petitioners to hand over the possession to the respondents. There is, therefore, no merit in this petition which is hereby dismissed.

8. The Sub-Divisional Officer, Khanapur, had fixed Tenancy Appeal no.2 of 2004 for hearing on 26.4.2004. It appears that he has not decided the appeal as yet. In the circumstances, the Sub-Divisional Officer is directed to decide the appeal not later than two months from the date the parties appear before him. The parties are directed to appear before him on 18.7.2005. There is also no dispute about the fact that the order of the appellate Court granting stay was challenged before this Court in

Writ Petition No.2111 of 2004. Further, according to the learned counsel for the respondents, it appears that the order of this Court was challenged by the petitioners in the Supreme Court which dismissed the Special Leave Petition (C) no.6765 of 2004 on 4.4.2005. Needless to state that the parties shall abide by the final decision in the proceedings which are pending in appeal.

9. The rule stands discharged.

Sd/-

S.A. BOBDE, J.